

CLEAN WATER NOW! COALITION

P.O. Box 4711, Laguna Beach, CA 92652 - 949.280.2225 - www.cleanwaternow.com

"The Clean Water Now! Coalition is dedicated to the protection, restoration and preservation of aquatic and riparian ecologies worldwide."



To: Michelle Mata
Water Resource Control Engineer
Core Regulatory Unit
SDRWQCB

Date: December 14, 2010

Re: NPDES Regulation of Public Display of Fireworks

Michelle:

The Coalition welcomes the opportunity to provide comments regarding its position in this matter.

We have followed this issue for several years, and wish to go on the record now as deeply appreciative of the incredible work product on this topic already, as provided by Marco Gonzalez of Coast Law Group. Per usual, Marco continues to be a beacon and lightning rod for water quality impairment and compliance remedies.

Our concerns presently are multitudinous, but we feel that there is a definite inextricable nexus between the NPDES permitting process, the MLPA State Marine Reserve areas (SMR) and SWRCB designated Areas of Special Biological Significance (ASBS). Fireworks displays must be viewed with these constructs in the foreground.

We wish to point out how acutely we feel the imminent announcement of re-configured or newly designated SMR listings by Cal Fish & Game in the MLPA now being considered by the State should affect the San Diego Board's decision-making process in the fireworks matter. When a SMR also enjoys ASBS status then the proposed protection and enforcement levels become markedly greater.

Here in our hometown of Laguna Beach, Heisler Park (Main Beach) carries both designations, ergo in or near that zone the SDRWQCB should prohibit fireworks. Due to the air and water borne migration of contaminants, the inherent technical difficulties for containment of said pollutants, an enlarged buffer zone should be part of the enjoinder.

When and where endangered and/or threatened species are present the protection should be more prominent and strident. If the public fireworks displays performed presently are within SMR and/or ASBS then they should sunset, be phased out, that is cease. Period.



For the past several years we've attempted to convince SDRWQCB staff that the presence at the Point of Discharge or in the oceanic migration corridor for Endangered Species Act aquatics, or even those listed as threatened, should automatically trigger an amendment to that watershed's Basin Plan Objectives (BPO). Contemporaneously we have petitioned the SWRCB staff contact for ASBS to integrate our reasoning into future ASBS designation considerations.

We have primarily focused upon ***O. mykiss***, the Southern Steelhead. It is our position that ALL tributaries and their POD vicinities that are part of the Southern California Designated Population Segment for the steelhead should get the highest priority, the greatest level of protection.

There is a definite need for a master plan or at least mandatory inter-agency collaboration, a systematic approach to create consistency and uniformity, that honors or bundles all of the concepts mentioned. The Coalition is very frustrated that our petitions are hitting walls or being held up due to the unnecessary AND non-compliant truncated/segmented situation occurring presently. The SDRWQCB has created a BPO Task Force or TAC recently but it is populated by a dominant, 99% chronic violator constituency, hence neutered at its inception.

We didn't conjure the idea of such a master management plan approach out of thin air, it is an integral element in CF&G laws and ESA requirements themselves, embedded in the ASBS prescriptions too. We do feel that the SWRCB needs to close the loop, connect the dots as it were to be consistent and in compliance with both State and federal regulations. It makes no sense, legally or biologically, to NOT make it an immediate priority, post haste.

In the late 1990's the SDRWQCB initiated the first steps in such a strategy by amending the BPOs for San Mateo and San Juan Creeks when the steelhead entered the ESA listing. Unfortunately, the Board, its parent SWRCB and CF&G failed to take the next logical step: All PODs for tributaries that are designated steelhead habitat (or those that are considered for recovery/recolonization) should be immediately listed as SMR and carry the ASBS protection status.

The Coalition profoundly believes and will continue to petition the Board and staff to amend ALL of the BPOs in its jurisdiction to comply with the conditions that are optimally conducive for said species presence and/or return. The SDRWQCB, as the local agency for the SWRCB, is the logical choice to assist, to facilitate a joining of prescriptions regionally. Just as watersheds are continuums and treated



as such by EPA, so too should near-tidal habitats be seen as a gestalt, as a coherent totality.

As for the fireworks displays, it would seem a no-brainer that at any POD or in the immediate vicinity of such a POD that is identified ESA or threatened habitat should also enjoy ASBS. Moreover, it should be axiomatic that there be a 100% ban on any and all fireworks displays as well in or near such SMR/ASBS zones.

As an enviro-consultant specializing in hydrology and water quality I know about the negative effects that Pollutants of Persistence (POP) and Contaminants of Concern inflict. Fireworks are not just a short-term, insignificant impairment, insular incidences or impairments. Their adverse impacts, especially upon sediment, are long-term, they cascade throughout marine eco-systems and water columns, not to mention impose sustained bio-magnification effects.

Respectfully submitted,

Roger von Bütow

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